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SUBJECT: Roxas Agrees to Resolve Some IPR Concerns With His Bill

Reftel: 05 Manila 05447

11. Summary: Philippine legislators have agreed to resolve U.S. concerns with one provision of proposed pharmaceutical legislation which would have violated TRIPS. End summary.

12. EconCouns followed up on the visit by USTR Director for Southeast Asian and Pacific Affairs David Katz (septel) by meeting separately with Congressman Junie Cua and Senator Manuel Roxas on November 22 to lobby for the removal of provisions in proposed legislation which would violate the TRIPS obligations of the Philippines. Cua and Roxas are the sponsors of the legislation in the House of Representatives and the Senate (respectively) which is targeted at reducing the prices of pharmaceuticals in the Philippines. This legislation is generally expected to pass the Philippine Congress over the next few weeks.

13. EconCouns noted to both Cua and Roxas that the U.S. has identified two provisions of the proposed legislation which are of concern. He passed to both copies of the interagency-cleared non-paper identifying specific language changes which would resolve both the data exclusivity and the new use issues raised by the legislation (both had previously received copies of the non-paper). He argued that while the Philippines has every right to take actions to benefit the health and economic circumstances of its population, those actions must respect the obligations the country has signed onto and the rights of the holders of patents.

14. Both Cua and Roxas spent time reviewing the language changes word-by-word with EconCouns. Both agreed that the current wording of the data exclusivity provision of the legislation is overly broad. Roxas promised to resolve the problem in the Senate version and to provide us with the new language. Cua undertook to consult with Roxas and others on changing the language of the House version.

15. Their responses on "new use patents" were less helpful. Both noted that the concept is very controversial internationally. They said that they did not agree that this provision would violate TRIPS, and they could not agree to remove it from the legislation. Cua noted that India's new patent legislation does not protect new use patents, and asked rhetorically, "is the U.S. going to go to the mat with India over this issue?"

16. Cua called EconCouns urgently on December 4 to request another copy of the non-paper. He said he was discussing the data exclusivity issue with House members, and they had reached consensus to change the language. He wanted to see again our recommended changes to explore whether they would be acceptable. Cua called again on December 8. He reported that the House Committee on Trade, which he presides, had amended the legislation partially resolving

our concerns on data exclusivity. Unfortunately, he said, time concerns related to the current debate of a possible constitutional assembly had cut short consideration of the bill. Nonetheless, he expected to see our concerns with data exclusivity completely resolved via committee-sponsored amendment on the floor.

¶7. Comment: Although we would have liked to see the new use language changed, as well, it is clear that Philippine legislators will not be induced to do so. Nonetheless, we believe resolution of the data exclusivity issue brings this legislation a long way toward acceptability. We will continue to work with legislators to ensure that new language on this point is acceptable, and will continue to provide language to Washington agencies for their review as soon as it becomes available.

Biographical Notes

¶8. We have added new information and comments to Intellipedia biographical pages on both Manuel Roxas (http://www.intelink.sgov.gov/wiki/Manuel_Roxas) and Junie Cua (http://www.intelink.sgov.gov/wiki/Junie_Evangelista_Cua).

KENNEY